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8 **UNITED STATES DISTRICT COURT**
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

10 HYDRODYNAMIC INDUSTRIAL CO., LTD, at Hong Kong Corporation,

11 Case No. CV 12-5058- ODW-(JEMx)

12 Plaintiffs.

13 **STIPULATED PROTECTIVE ORDER**
FOR LITIGATION INVOLVING
PATENTS, HIGHLY SENSITIVE
CONFIDENTIAL INFORMATION
AND/OR TRADE SECRETS

14 GREEN MAX DISTRIBUTORS, INC., a
15 Washington Corporation, and DOES 1-10
inclusive;

16 Defendants.

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18 GREEN MAX DISTRIBUTORS, INC., a
Washington Corporation,

19 Counterclaimant.

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21 HYDRODYNAMIC INDUSTRIAL CO., LTD, at Hong Kong Corporation,

22 Counter- defendant.

24 1. **PURPOSES AND LIMITATIONS**

25 Disclosure and discovery activity in this action are likely to involve production of
26 confidential, proprietary, or private information for which special protection from public disclosure
27 and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly,
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1 the parties hereby stipulate to and petition the court to enter the following Stipulated Protective
2 Order. The parties acknowledge that this Order does not confer blanket protections on all
3 disclosures or responses to discovery and that the protection it affords from public disclosure and
4 use extends only to the limited information or items that are entitled to confidential treatment under
5 the applicable legal principles. The parties further acknowledge, as set forth in Section 14.4, below,
6 that this Stipulated Protective Order does not entitle them to file confidential information under
7 seal; Civil Local Rule 79-5.1 and General Order 62 set forth the procedures that must be followed
8 and the standards that will be applied when a party seeks permission from the court to file material
9 under seal.

10 2. DEFINITIONS

11 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
12 information or items under this Order.

13 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
14 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of
15 Civil Procedure 26(c).

16 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well
17 as their support staff).

18 2.4 Designating Party: a Party or Non-Party that designates information or items that it
19 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
20 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”

21 2.5 Disclosure or Discovery Material: all items or information, regardless of the
22 medium or manner in which it is generated, stored, or maintained (including, among other things,
23 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
24 responses to discovery in this matter.

25 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
26 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as
27 a consultant in this action, (2) is not a past or current employee of a Party or of a Party’s
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1 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party or
2 of a Party's competitor.

3 2.7 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or
4 Items: extremely sensitive "Confidential Information or Items," disclosure of which to another
5 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less
6 restrictive means.

7 2.9 House Counsel: attorneys who are employees of a party to this action. House
8 Counsel does not include Outside Counsel of Record or any other outside counsel.

9 2.10 Non-Party: any natural person, partnership, corporation, association, or other legal
10 entity not named as a Party to this action.

11 2.11 Outside Counsel of Record: attorneys who are not employees of a party to this
12 action but are retained to represent or advise a party to this action and have appeared in this action
13 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

14 2.12 Party: any party to this action, including all of its officers, directors, employees,
15 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

16 2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
17 Material in this action.

18 2.14 Professional Vendors: persons or entities that provide litigation support services
19 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
20 storing, or retrieving data in any form or medium) and their employees and subcontractors.

21 2.15 Protected Material: any Disclosure or Discovery Material that is designated as
22 "CONFIDENTIAL," or as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."

23 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from a
24 Producing Party.

25 3. SCOPE

26 The protections conferred by this Stipulation and Order cover not only Protected Material
27 (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all
28 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,

1 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
2 However, the protections conferred by this Stipulation and Order do not cover the following
3 information: (a) any information that is in the public domain at the time of disclosure to a
4 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a
5 result of publication not involving a violation of this Order, including
6 becoming part of the public record through trial or otherwise; and (b) any information known to the
7 Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from
8 a source who obtained the information lawfully and under no obligation of confidentiality to the
9 Designating Party. Any use of Protected Material at trial shall be governed by a separate agreement
10 or order.

11 4. DURATION

12 Even after final disposition of this litigation, the confidentiality obligations imposed by this
13 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
14 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
15 defenses in this action, with or without prejudice; and (2) final judgment herein after the
16 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
17 including the time limits for filing any motions or applications for extension of time pursuant to
18 applicable law.

19 5. DESIGNATING PROTECTED MATERIAL

20 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
21 Non-Party that designates information or items for protection under this Order must take care to
22 limit any such designation to specific material that qualifies under the appropriate standards. To the
23 extent it is practical to do so, the Designating Party must designate for protection only those parts
24 of material, documents, items, or oral or written communications that qualify – so that other
25 portions of the material, documents, items, or communications for which protection is not
26 warranted are not swept unjustifiably within the ambit of this Order.

27 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown
28 to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily

1 encumber or retard the case development process or to impose unnecessary expenses and burdens
2 on other parties) expose the Designating Party to sanctions.

3 If it comes to a Designating Party's attention that information or items that it designated for
4 protection do not qualify for protection at all or do not qualify for the level of protection initially
5 asserted, that Designating Party must promptly notify all other parties that it is withdrawing the
6 mistaken designation.

7 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
8 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
9 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
10 designated before the material is disclosed or produced.

11 Designation in conformity with this Order requires:

12 (a) for information in documentary form (e.g., paper or electronic documents, but
13 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
14 affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
15 ONLY" to each page that contains protected material. If only a portion or portions of the material
16 on a page qualifies for protection, the Producing Party also must clearly identify the protected
17 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each
18 portion, the level of protection being asserted.

19 A Party or Non-Party that makes original documents or materials available for inspection
20 need not designate them for protection until after the inspecting Party has indicated which material
21 it would like copied and produced. During the inspection and before the designation, all of the
22 material made available for inspection shall be deemed "HIGHLY CONFIDENTIAL –
23 ATTORNEYS' EYES ONLY." After the inspecting Party has identified the documents it wants
24 copied and produced, the Producing Party must determine which documents, or portions thereof,
25 qualify for protection under this Order. Then, before producing the specified documents, the
26 Producing Party must affix the appropriate legend ("CONFIDENTIAL" or "HIGHLY
27 CONFIDENTIAL – ATTORNEYS' EYES ONLY") to each page that contains Protected Material.
28 If only a portion or portions of the material on a page qualifies for protection, the Producing Party

1 also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
2 margins) and must specify, for each portion, the level of protection being asserted.

3 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
4 Designating Party identify on the record, before the close of the deposition, hearing, or other
5 proceeding, all protected testimony and specify the level of protection being asserted. When it is
6 impractical to identify separately each portion of testimony that is entitled to protection and it
7 appears that substantial portions of the testimony may qualify for protection, the Designating Party
8 may invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right
9 to have up to 21 days to identify the specific portions of the testimony as to which protection is
10 sought and to specify the level of protection being asserted. Only those portions of the testimony
11 that are appropriately designated for protection within the 21 days shall be covered by the
12 provisions of this Stipulated Protective Order. Alternatively, a Designating Party may specify, at
13 the deposition or up to 21 days afterwards if that period is properly invoked, that the entire
14 transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
15 ATTORNEYS’ EYES ONLY.”

16 Parties shall give the other parties notice if they reasonably expect a deposition, hearing or
17 other proceeding to include Protected Material so that the other parties can ensure that only
18 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”
19 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition
20 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL
21 – ATTORNEYS’ EYES ONLY.”

22 Transcripts containing Protected Material shall have an obvious legend on the title page that
23 the transcript contains Protected Material, and the title page shall be followed by a list of all pages
24 (including line numbers as appropriate) that have been designated as Protected Material and the
25 level of protection being asserted by the Designating Party. The Designating Party shall inform the
26 court reporter of these requirements. Any transcript that is prepared before the expiration of a 21-
27 day period for designation shall be treated during that period as if it had been designated “HIGHLY
28 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After

the expiration of that period, the transcript shall be treated only as actually designated.

(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a portion or portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portion(s) and specify the level of protection being asserted.

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party's right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

6 CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by providing written notice of each designation it is challenging and describing the basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the challenge to confidentiality is being made in accordance with this specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must begin the process by conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging Party must explain the basis for its belief that the confidentiality designation was not proper and must give the Designating Party an opportunity to review the designated material, to reconsider the

1 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
 2 designation. A Challenging Party may proceed to the next stage of the challenge process only if it
 3 has engaged in this meet and confer process first or establishes that the Designating Party is
 4 unwilling to participate in the meet and confer process in a timely manner.

5 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
 6 intervention, the Designating Party shall file and serve a motion to retain confidentiality under
 7 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of
 8 the initial notice of challenge or within 14 days of the parties agreeing that the meet and confer
 9 process will not resolve their dispute, whichever is earlier.¹ Each such motion must be
 10 accompanied by a competent declaration affirming that the movant has complied with the meet and
 11 confer requirements imposed in the preceding paragraph. Failure by the Designating Party to make
 12 such a motion including the required declaration within 21 days (or 14 days, if applicable) shall
 13 automatically waive the confidentiality designation for each challenged designation. In addition,
 14 the Challenging Party may file a motion challenging a confidentiality designation at any time if
 15 there is good cause for doing so, including a challenge to the designation of a deposition transcript
 16 or any portions thereof. Any motion brought pursuant to this provision must be accompanied by a
 17 competent declaration affirming that the movant has complied with the meet and confer
 18 requirements imposed by the preceding paragraph.

19 The burden of persuasion in any such challenge proceeding shall be on the Designating
 20 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose
 21 unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions.
 22 Unless the Designating Party has waived the confidentiality designation by failing to file a motion
 23 to retain confidentiality as described above, all parties shall continue to afford the material in
 24 question the level of protection to which it is entitled under the Producing Party's designation until
 25 the court rules on the challenge.

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 27 ¹ Alternative: It may be appropriate in certain circumstances for the parties to agree to shift the burden to move on the Challenging
 28 Party after a certain number of challenges are made to avoid an abuse of the process. The burden of persuasion would remain on the
 Designating Party.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

1 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
2 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
3 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
4 the categories of persons and under the conditions described in this Order. When the litigation has
5 been terminated, a Receiving Party must comply with the provisions of section 15 below (FINAL
6 DISPOSITION).

7 Protected Material must be stored and maintained by a Receiving Party at a location and in
8 a secure manner that ensures that access is limited to the persons authorized under this Order.

9 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
10 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
11 information or item designated “CONFIDENTIAL” only to:

12 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
13 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
14 information for this litigation;

15 (b) the officers, directors, and employees (including House Counsel) of the
16 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed
17 the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

18 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
19 reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement
20 to Be Bound” (Exhibit A);

21 (d) the court and its personnel;

22 (e) court reporters and their staff, professional jury or trial consultants, and
23 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
24 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

25 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
26 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
27 unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed
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1 deposition testimony or exhibits to depositions that reveal Protected Material must be separately
2 bound by the court reporter and may not be disclosed to anyone except as permitted under this
3 Stipulated Protective Order.

4 (g) the author or recipient of a document containing the information or a custodian
5 or other person who otherwise possessed or knew the information.

6 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
7 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
8 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY
9 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

10 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
11 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
12 information for this litigation;

13 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary
14 for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound”
15 (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a), below, have been
16 followed;

17 (c) the court and its personnel;

18 (d) court reporters and their staff, professional jury or trial consultants, and
19 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
20 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

21 (e) the author or recipient of a document containing the information or a custodian
22 or other person who otherwise possessed or knew the information.

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25 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
26 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to Experts.

27 (a) Unless otherwise ordered by the court or agreed to in writing by the Designating
28 Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item

1 that has been designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" pursuant
2 to paragraph 7.3(c) first must make a written request to the Designating Party that (1) identifies the
3 general categories of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information
4 that the Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full name of
5 the Expert and the city and state of his or her primary residence, (3) attaches a copy of the Expert's
6 current resume, (4) identifies the Expert's current employer(s), (5) identifies each person or entity
7 from whom the Expert has received compensation or funding for work in his or her areas of
8 expertise or to whom the expert has provided professional services, including in connection with a
9 litigation, at any time during the preceding five years, and (6) identifies (by name and number of
10 the case, filing date, and location of court) any litigation in connection with which the Expert has
11 offered expert testimony, including through a declaration, report, or testimony at a deposition or
12 trial, during the preceding five years.

13 (b) the Designating Party will have five (5) days from the aforesaid written request
14 in which to object to the disclosure of HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
15 ONLY" Information or Items to such expert.

16 (c) Drafts of any reports provided by such expert or consultant, as well as
17 communications between and among the expert or consultant, other experts or consultants
18 retained by the party, the attorneys for the party retaining the experts or consultants, and the
19 retaining party are not discoverable except to the extent that the communications relate to
20 compensation for the expert or consultant's study or testimony; identify facts or data that the
21 expert or consultant considered in forming the opinions to be expressed; or identify
22 assumptions that the expert or consultant relied upon in forming the opinions to be expressed.

23 (d) The foregoing notwithstanding, any such expert or consultant who is an
24 employee of a party or a competitor of any of the parties shall not be shown or otherwise given
25 access to documents or information designated as HIGHLY CONFIDENTIAL –
26 ATTORNEYS' EYES.

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8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party's permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

By entering this order and limiting the disclosure of information in this case, the Court does not intend to preclude another court from finding that information may be relevant and subject to disclosure in another case. Any person or party subject to this order who becomes subject to a motion to disclose another party's information designated as confidential pursuant to this order shall promptly notify that party of the motion so that the party may have an opportunity to appear and be heard on whether that information should be disclosed.

9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-

1 Party in this action and designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
 2 ATTORNEYS' EYES ONLY." Such information produced by Non-Parties in connection with this
 3 litigation is protected by the remedies and relief provided by this Order. Nothing in these
 4 provisions should be construed as prohibiting a Non-Party from seeking additional protections.

5 (b) In the event that a Party is required, by a valid discovery request, to produce
 6 a Non-Party's confidential information in its possession, and the Party is subject to an agreement
 7 with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

8 1. promptly notify in writing the Requesting Party and the Non-Party that some
 9 or all of the information requested is subject to a confidentiality agreement with a Non-Party;

10 2. promptly provide the Non-Party with a copy of the Stipulated Protective
 11 Order in this litigation, the relevant discovery request(s), and a reasonably specific description of
 12 the information requested; and

13 3. make the information requested available for inspection by the Non-Party.

14 (c) If the Non-Party fails to object or seek a protective order from this court
 15 within 14 days of receiving the notice and accompanying information, the Receiving Party may
 16 produce the Non-Party's confidential information responsive to the discovery request. If the Non-
 17 Party timely seeks a protective order, the Receiving Party shall not produce any information in its
 18 possession or control that is subject to the confidentiality agreement with the Non-Party before a
 19 determination by the court.² Absent a court order to the contrary, the Non-Party shall bear the
 20 burden and expense of seeking protection in this court of its Protected Material.

21 10. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

22 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
 23 Protected Material to any person or in any circumstance not authorized under this Stipulated
 24 Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party
 25 of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the

28 ² The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party and to afford
 29 the Non-Party an opportunity to protect its confidentiality interests in this court.

1 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made
 2 of all the terms of this Order, and (d) request such person or persons to execute the
 3 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

4 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
PROTECTED MATERIAL

5 (a) Inadvertent or unintentional production of privileged or work product
 6 information will not be construed as a waiver, in whole or in part, of the privilege or the work
 7 product status of the information inadvertently or unintentionally disclosed. In the event of an
 8 inadvertent or unintentional production of privileged or work product information, the
 9 PRODUCING PARTY shall promptly notify the RECEIVING PARTY that the information is
 10 privileged or is work product. The PRODUCING PARTY further shall provide the
 11 RECEIVING PARTY with substitute copies of the affected documents in which the privileged
 12 or work product information has been redacted.

13 (b) Upon receiving notice of the PRODUCING PARTY’s claim of privilege or
 14 work product status of previously-produced information, the RECEIVING PARTY shall take
 15 reasonable steps to retrieve and destroy all un-redacted copies of the materials.

16 (c) Nothing in this section shall affect the right of a party to challenge a
 17 confidentiality designation or a claim of privilege or work product through motion practice.

18 **12. MISCELLANEOUS**

19 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
 20 seek its modification by the court in the future.

21 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order
 22 no Party waives any right it otherwise would have to object to disclosing or producing any
 23 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
 24 Party waives any right to object on any ground to use in evidence of any of the material covered by
 25 this Protective Order.

26 12.3 Export Control. Disclosure of Protected Material shall be subject to all applicable
 27 laws and regulations relating to the export of technical data contained in such Protected Material,
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1 including the release of such technical data to foreign persons or nationals in the United States or
2 elsewhere. The Producing Party shall be responsible for identifying any such controlled technical
3 data, and the Receiving Party shall take measures necessary to ensure compliance.]

4 12.4 Filing Protected Material. Without written permission from the Designating Party or
5 a court order secured after appropriate notice to all interested persons, a Party may not file in the
6 public record in this action any Protected Material. A Party that seeks to file under seal any
7 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
8 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at
9 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing
10 that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled
11 to protection under the law. If a Receiving Party's request to file Protected Material under seal
12 pursuant to Civil Local Rule 79-5(d) is denied by the court, then the Receiving Party may file the
13 Protected Material in the public record pursuant to Civil Local Rule 79-5 unless otherwise
14 instructed by the court.

15 13. FINAL DISPOSITION

16 Within 60 days after the final disposition of this action, as defined in paragraph 4,
17 each Receiving Party must return all Protected Material to the Producing Party or destroy such
18 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
19 compilations, summaries, and any other format reproducing or capturing any of the Protected
20 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit
21 a written certification to the Producing Party (and, if not the same person or entity, to the
22 Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all
23 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has
24 not retained any copies, abstracts, compilations, summaries or any other format reproducing or
25 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
26 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
27 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work
28 product, and consultant and expert work product, even if such materials contain Protected Material.

1 Any such archival copies that contain or constitute Protected Material remain subject to this
2 Protective Order as set forth in Section 4 (DURATION).

3 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

4 DATED: February 4, 2013

/s/Sarah Brooks
5 Attorneys for Plaintiff

6 DATED: February 4, 2013

/s/ Dariush Adli
7 Attorneys for Defendant

9 PURSUANT TO STIPULATION, IT IS SO ORDERED.

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12 DATED: February 5, 2013


13 Otis D. Wright, II
14 United States District Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on [date] in the case of _____ [insert **formal name of the case and the number and initials assigned to it by the court**]. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and telephone number]
as my California agent for service of process in connection with this action or any proceedings
related to enforcement of this Stipulated Protective Order.

Date:

City and State where sworn and signed:

Printed name: _____
[printed name]

Signature: _____
[signature]